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10/072,021	02/07/2002	Yu Zheng	PAT-1267DIV	3011

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EXAMINER

CANFIELD, ROBERT

ART UNIT PAPER NUMBER

3635

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,021

Applicant(s)

ZHENG, YU

Examiner

Robert J Canfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 22-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. This Office action is in response to the amendment filed 07/14/04. Claims 22-27 remain pending. Claims 1-21 have been canceled.

2. The previous obvious-type double patenting rejecting is withdrawn.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 22 and 25 as best understood are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6,357,510. Although the conflicting claims are not identical, they are not patentably distinct from each other because the panel piece of the patent claim can be read as the covering of the instant claims.

5. Claims 22 and 25 as best understood are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,571,410. Although the conflicting claims are not identical, they are

not patentably distinct from each other because the patent claims can be read on the instant claims as best understood.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the covering placed over but not enclosing a single foldable frame member where the covering has the same configuration of the frame member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 21 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is an inadequate written description of a covering placed over but not enclosing a single foldable frame member where the covering has the same configuration of the frame member. The only description of a separate and removable covering is that of covering 208 in figure 13, which as understood does not have the same configuration as a single frame member. It is unclear what is meant by "having the same configuration as the frame member". The description of Figure 1C discloses a removable panel 38a but not a covering.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 23, 24, 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the covering can be both placed over first, second, third and fourth support frames and have the same configuration as a single foldable frame member.

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 23 and 26 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,137,044 to Brady.

Brady provides sleeves 50 for retaining frame members 42a and 42b which are hingedly coupled and which may be folded into a plurality of concentric rings as shown in figure 16. A covering in the form of the disclosed second layer (description of figure 19 and column 11, lines 62+) can be placed over but not enclosing the support frame in the unfolded orientation the covering being separate and removable.

13. Claims 23 and 26 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,645,096 to Hazinski et al.

Hazinksi provides sleeves 45, 46 for retaining frame members which are hingedly coupled and which may be folded into a plurality of concentric rings as shown in figures 9e-126. A covering in the form of fly can be placed over but not enclosing the support frame in the unfolded orientation the covering being separate and removable.

14. Claims 23, 24, 26 and 27 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 6-42227 in view of U.S. Patent 5,137,044 to Brady.

The Japanese references provides circular foldable frame members 3 forming a support frame. The frame members are collapsible to a folded position to form a plurality of concentric rings. Figure 1 shows at least four support frames hingedly connected to one another where the left side of each support frame is hingedly coupled to the right side of an adjacent support frame to define an enclosed space.

The Japanese reference fails to provide a covering placed over the support frame but not enclosing the support frame the covering being removable.

Brady teaches it was well known at the time of the invention to provide a second covering draped over and removable from a support frame as described in figure 19 and at column 11.

It would have been obvious at the time of the invention to one having ordinary skill in the art to have draped a removable second covering over the structure of

the Japanese patent in the unfolded orientation as taught by Brady so as to provide addition protection from inclement weather. This second covering is typically referred to a rain fly in the tent art.

15. Claims 23, 24, 26 and 27 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,301,705 to Zheng in view of U.S. Patent 5,137,044 to Brady.

Zheng provides circular foldable frame members 34, 38, 42, 46 forming a support frame. The frame members are collapsible to a folded position to form a plurality of concentric rings. Figure 2 shows four support frames hingedly connected to one another where the left side of each support frame is hingedly coupled to the right side of an adjacent support frame to define an enclosed space.

Zheng fails to provide a covering placed over the support frame but not enclosing the support frame the covering being removable.

Brady teaches it was well known at the time of the invention to provide a second covering draped over and removable from a support frame as described in figure 19 and at column 11.

It would have been obvious at the time of the invention to one having ordinary skill in the art to have draped a removable second covering over the structure of Zheng in the unfolded orientation as taught by Brady so as to provide addition

protection from inclement weather. This second covering is typically referred to a rain fly in the tent art.

16. Applicant's arguments filed 07/14/04 have been fully considered but they are not persuasive. Applicant argues that the coverings of Brady and Hazinski do not have the same configuration of a single frame member. The dependent claims that are rejected require the covering be placed over plural support frames. It is unclear and the examiner fails to find an adequate written description of an embodiment having the covering placed over but not enclosing and having the same configuration of a single frame member and also placed over plural support frames.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield
Primary Examiner
Art Unit 3635



10/01/04